

## ***DAIL ADVISORY BOARD MEETING***

November 14, 2013

Comfort Inn-Berlin

### **Attendees**

Board Members: Nancy Breiden, Gini Milkey, Nancy Lang, Steve Pouliot, Diane Novak, Sarah Launderville, Max Barrows, , Janet Cramer, Jim Coutts (afternoon only)

Guests: Marlys Waller, Jackie Majoros

State Employees: Fred Jones, Wendy Edwards, Marybeth McCaffrey, Alicia Wein, Mike Attley

Meeting called to order at 10:09 a.m.

Janet Cramer, Chairperson started the meeting with introductions around the table.

### **DAIL Advisory Board Operating Procedures and Board Updates**

Janet C stated that Sara Launderville originally helped to put together the DAIL Advisory Board Operating Procedures. Linda B expressed interest in discussing Title 33 Section 505 (State Law/Statute). Under section (f) it indicates the following: "The board shall advise the commissioner on matters related to the interest of older persons and persons with disabilities. It shall be guided generally by reference to the statements of objectives and policy found in the Older Americans Act and the Americans with Disabilities Act". It was stated that this statement is very broad in interpretation.

Discussion was opened on section (b) of the Operating Procedures. We are in an active time in state government and board members would like to contemplate section (b) in regard to subcommittees. A question was raised as to whether there should be more subcommittees; or is there more that are not known? Subcommittees were set up due to a law suit and have continued to meet as the agreed upon settlement. The Governor is to appoint representatives on the Board. The Advisory Board is relied upon to raise issues. Many perspectives have been brought to the Board meetings from Board members. Generally, and as stated in the Operating Procedures, the Board has made decisions based on consensus. There have been times in the past that the Board has voted on specific issues and some Board members felt that the discussion should have been captured in more detailed meeting minutes.

Board members reported that they would like information that is being covered in the DAIL Advisory Board meeting printed and distributed at least one week before the actual meeting. It was also stated that the minutes should be on the website. Board members felt that it was their responsibility to monitor and advise on what is going on that would affect clients. It is important to respond to current events and things that are happening as they will have an impact on the population served. Board members need access to materials at least one week in advance of the meeting. They need time to review it, review the implications of changes,

etc. It is important to have minutes of meetings be very specific as to what is happening rather than general. Minutes should reflect votes, discussion, etc.

Board Members would also like a process developed whereby they can add something to the agenda if needed. The question was raised as to whether there was an open door for this process? Janet C agreed regarding having an open door process for the agenda and that the process of distributing information one week in advance would be sufficient. It was explained to Board Members that the DAIL website is under maintenance at the present time to ensure that it is more intuitive and consistent and therefore the Minutes of the Board Meetings will be posted when the website is back up.

Concern was expressed by Board members that the Meeting Minutes have not been submitted for approval to the Board for several months now. Board Members felt that the meeting minutes need to contain opinions from the Board Members that are expressed during the meeting rather than generalizations. Advice and recommendations should be in the minutes. They should also include the board members opinions about the issues discussed.

There was a question about Open meetings law – what is the flexibility?

Board Members stated that there should always be a specific place in the agenda where the public could express their comments. One suggestion was that this time is as a fixed time in the agenda. Another suggestion was to have a time after each agenda item where the public could comment.

A Motion was made to table the discussion of the board operating procedures – chair stated that if there was time it would be discussed today.

### **Board Updates:**

Nancy L stated that she had attended an informational session at Home Share VT. She shared that Home Share VT is doing a lot with Home Care other than Home Share VT – nonprofit help with matching care givers with people who need care, it is a self-directed program. This is a Chittenden County service. There is a huge demand for both programs.

Nancy – activities of Imagine the Future Task Force – there have been three meetings of this task force – originally the information would be gathered by March 2014. A State System of Care Plan for Developmental Services is developed every three years. Directed to complete work Feb/March 2014. Concern was expressed of completing the task there was talk about disassociating the system of care development from the Task Force. The Task Force did a consensus vote for the system of care plan development to be put off for one year – it was not unanimous but the vote was carried that it be delayed. This recommendation was sent to the commissioner. It was reported back that the recommendation was rejected and the new system of care plan development will be going ahead. The committee is talking about who this serves, who we should be serving, are we effective or could we be more effective? Question

asked what the impetus was. Question asked if there were any feedbacks as to the rejection. It was stated that Commissioner reported back that legally it had to be done within this time frame and the she has some changes in deliveries.

Steve P shared that October was White Cane Awareness month. There were six activities throughout the State. There were a number of state and local officials who attended. Stuart Schurr, Deputy Commissioner, participate in an event in Montpelier. These activities help to make a statement as to what White Cane is all about.

**Senior Guardianship** (presentation by Mike Attley, Public Guardian, Office of Public Guardian/DAIL)

Mike started his presentation at 10:38. He gave a brief description and explained the history of the Office of Public Guardian. A description of the population serviced under Title 14 guardianship was given as well as a description of the statutory powers, the role of the office and in particular the guardian. There are a couple different state laws that cover this such as Title 15-senior guardianship. Title 14 deals with all probate court guardianships. For a small fee you can ask for guardianship – there is voluntary and involuntary guardianship. It opens the door and is a less invasive program. We hold a value of guardianship in Vermont. Guardians have more leeway in other states. Vermont has been good about keeping the perspective client based. Vermont has things that protect the client. Petition has information/questions that include options other than guardianship. An attorney will be assigned to them and there will be an outside evaluation. There are several factors to consider regarding the client: medical, financial, general supervision and legal decisions. Other points to consider are where is the client presently living-what is the living situation? Seniors who are at risk in their living situation – general supervisory power helps decide if it needs to be changed. VT does everything they can so that guardianship is not needed, but still receive help in making decisions. One of the jobs of the Office of Public Guardian is to weigh the mandate and what the person wants. OPG is the guardian of last resort. They help/advise families to have a member of the family to be a guardian. Involuntary guardianship does away with civil rights. Linda asked what the role of the state is if it gets to the state level in making sure that people that are put into guardianship that the family member is not abusing the senior. There is now a background check of the guardian. The judge will have the final decision. There is a criminal record check-this is law. There is only a state criminal record check which does not go beyond states outside of VT. The state registry is also checked. Having a felony doesn't necessarily mean you can't be a guardian-this is up to the discretion of the judge. Question was asked as to whether VT has a way of making sure that the judges are on the same page? Judges have a lot of leeway – generically there is consistency. Mike has been impressed with the way VT handles giving guardianships. Nancy asked about helping people who have private guardianships – how does OPG help these consumers? Anybody can call OPG regarding any issues going on. In the end it is the client that has the power to refuse medical treatments, etc. A few questions that are asked of the client are: 1. what does the person want, 2. substitute judgment (what the person would have wanted before they were in this situation.)

Most guardianships look at all three aspects and what is in the client's best interest. There are only so many things a guardian has control over. Judge rules whether guardianship is needed and it is up to the client as to whether it should be the state or a family member/friend. Most common reasons for guardianship are health, financial or living situation. If somebody is a suitable guardian OPG is the last "in line". OPG helps the client/guardian sort out things that are needed or help that is available. It is about trying to come up with alternative living situations, etc. It is still up to the client as to what they want. VT State employees – how many people are there, what is their case load, is it seniors or clients with disabilities? We have approx. 25 people and one administrative staff. Case load is generally 30 but this is going up. There are more DD folks – this is the bulk – approximately 600 clients were taken care of. Approx. 100 served. Monitoring the financial work – protection is that you are accountable to the probate court. This is reported annually. Probate court becomes "referee", as a guardianship they report to the court. Guardians are to report all finances to the court. Linda suggested that the schools have the OPG handbook. Mike will take this up with administration. Nancy-public guardianship program in VT is good and has a deep understanding of self-determination. Charge is taking seriously to help them develop skills to the point of them not needing a guardian. Nancy stated that they usually recommend OPG over private guardians. There is value in having one person who knows that person to be a guardian. Matt brought up the concern that it is usually the problem lies with the private guardians over the public. Mike also takes care of voluntary guardian program if anybody is interested.

**Division of Vocational Rehabilitation/Motivational Interviewing** (presentation by Alicia Wein DVR Staff Development and Training Coordinator)

Alicia handed out information explaining what Motivational Interviewing (MI) is and discussed this new method/approach that DVR/DBVI is using in educational training for the counselors of DVR/DBVI. Motivational Interviewing (MI) is a method that when combined with practice and fidelity to the model results in engagement and movement of the consumer/client. The spirit of the method can be characterized in a few key points: motivation to change is elicited from the client, and is not imposed from outside forces; it is the client's task, not the counselor's, to articulate and resolve his/her ambivalence; direct persuasion is not an effective method for resolving ambivalence; the counseling style is generally quiet and elicits information from the client; the counselor is directive, in that they help the client to examine and resolve ambivalence; readiness to change is not a trait of the client, but a fluctuating result of interpersonal interaction; and the therapeutic relationship resembles a partnership or companionship. MI uses four general processes to achieve its ends: Engaging – used to involve the client in talking about issues, concerns and hopes, and to establish a trusting relationship with a counselor; Focusing – used to narrow the conversation to habits or patterns that clients want to change; Evoking – used to elicit client motivation for change by increasing clients' sense of the importance of change, their confidence about change, and their readiness to change; and Planning – used to develop the practical steps clients want to use to implement the changes they desire.

She discussed the history behind this approach and shared with Board Members the history of the training. Also handed out was an article written by Trevor Manthey, Casey Jackson and Peg Evans-Brown.

Meeting broke for lunch at 12:10

**Health Reform** (presentation by Marybeth McCaffrey, DAIL Director of Operations/Principal Health Reform Administrator)

Marybeth presented a Power Point presentation regarding the Vermont Health Care Innovation Project (VHCIP). She presented a project overview and payment models overview. She explained what we are trying to do through this project which is to create/accelerate a statewide, all-payer system of: care coordination and care management; value-based provider payment; and electronic medical records. She also explained the basics of how this will be done. There is input through 7 work groups on policy and spending; recommendations from the work groups to the steering committee to the core team. These recommendations will be on: (a) Coordinated policy – Care management; payment models; and Health Information exchange as well as (b) Targeted Funding – Modeling and testing payment reforms; expanding health information exchange; and supporting providers to change their business models. Marybeth discussed the details of the above mentioned sections.

**Commissioner Updates** (Marybeth McCaffrey, DAIL Director of Operations/Principal Health Reform Administrator)

#### **Developmental Disabilities Services Division**

**DS Rescission** - announced this past month in the amount of \$2.23M. This reduction in spending for each individual does not have to mean cutting services- agencies are to look for administrative efficiencies and changes to models of services. Instructions to provider agencies include the requirement to consult with consumer/guardian and no aspect of a person's plan is to be held harmless.

**Imagine the Future Task Force** - is considering these questions:

- Who should we be serving?
- Are we missing opportunities to serve?
- Using resources in a strategic way- opening up our SSOC to those other than the most vulnerable. Look at whom can we serve to help a little so they can achieve a lot?

**BTS celebration**- final event is Friday (tomorrow) at Killington Grand.

#### **Adult Services Division**

**Anderson Parkway status** – Chittenden County Visiting Nurse Association (VNA) partnership with DAIL began providing Attendant Care Services at this site in 2001. Due to anticipated risk, DAIL and VNA agreed in 2001 to a per diem reimbursement rate with end-of-year reconciliation

to ensure reimbursement covered VNA's costs. Recently, VNA has begun to suffer losses mostly due to hospitalizations and other absences. The program is limited to 10 participants; each absence causes a 10% loss in revenue. There is no reimbursement when resident is away (unlike nursing homes); and staffing levels remain constant when one or two residents are away. DAIL Commissioner has offered a package of increased rates and a risk sharing arrangement. VNA Executive Director, Judy Peterson, has submitted a proposal offering the following:

- Rate increase (w/ vacancy rate built in
- 60-day bed hold (VNA continues to be paid for first 60 days resident is away)
- At year end, VNA keeps first 1% of losses or gains and shares balance of remaining loss or gain (50/50)

DAIL is exploring all options.

Money Follows the Person - Of the 960 people educated in SFY 2013, 88 people have enrolled in the program. In all, since the grant was awarded in 2011, 130 people have enrolled. Many have identified housing as a barrier to transition. In the SFY 2013, 50 people residing in nursing facilities transitioned to a home and community based setting of their choice and 16 people graduated from the program. Graduation from the MFP grant is the successful completion of 365 days of home and community based living. To date, a total of 72 participants have transitioned and of those 23 participants have graduated.

Adult Family Care (AFC) – is a new Choices for Care (CFC) service intended to resolve a barrier to transitions from nursing homes and provide more community-based options, enabling participants who require 24-hour assistance to move to a home-based setting. Effective September 1, 2013, CFC implemented the new service with 11 approved Authorized Agencies who will be paid a daily tiered rate (\$75-\$152 depending upon functional acuity) for LTSS (not acute care or room and board) to contract with private, unlicensed AFC homes that serve one to two people. DAIL implemented a training plan for case managers, providers and DAIL staff in addition to monthly technical assistance calls and quarterly stakeholder meetings.

Quality Management - hired three new staff to manage the quality activities and certification reviews for the division. During this reporting period, staff receiving orientation and training and initiated continued certification reviews.

#### CFC REINVESTMENTS

Guided by:

- The language in 2013 Acts and Resolves No. 50, Sec. E.308, which sets parameters for reinvestment; and
- Assessment completed by the entire LTC provider network re: the adequacy of the system
- As a result of the above, DAIL is focusing its reinvestment plan in the following areas:
  - Continue support for rebalancing by:
    - Prioritizing services for those in H/H needs groups;
    - Prioritizing HCBS (AFC update-below\*)

-Mitigating the risk of a high needs wait list

- Address inadequacies in the MNG – we are expanding services beyond case management, AD and homemaker services by developing a Flexible Funding Service Option, the goal of which is to fully maximize the use of Moderate Needs funds, serve more people, create more flexibility for the people using services, and improve satisfaction.
- In September 2013, DAIL requested and received legislative approval for the following CFC reinvestments using SFY2013 carry forward funds:
  - \$170,000 to offset the impact of sequestration on Older Americans Act Congregate Nutrition Services (Title IIIC1, \$113,668) and Home-Delivered Nutrition Services (Title IIIC2, \$56,135). These funds have been distributed to the AAAs.
  - \$40,000 to support innovative person-centered, community-based approaches to reducing nutrition risk among older adults at high nutritional and social risk who receive home delivered meals. Funds will be awarded on a competitive basis through one or more grant awards to the AAAs.
  - In the SFY2014 ‘big bill’, it has been proposed to award \$50,505 to HASS

### **Division of Licensing and Protection**

Brattleboro Retreat Update- The Retreat has achieved substantial compliance with CMS regulations and has avoided the loss of federal funding. An on-site survey completed on November 6 concluded that the Retreat had adequately corrected all outstanding serious deficiencies, which were first identified during a complaint investigation on February 21.

APS Panel Review – being convened as part of the settlement. The meeting will be on 11/19 to review first quarter of random sample of substantiated, unsubstantiated cases and closed contacts.

**SIM-Health Care Work Force Work Group** - DAIL has been invited to join to provide input on non-licensed direct care workforce. Workgroup will be looking at current supply and future demand. If no opportunity to work toward development of core competences/training will look to other avenues (e.g., H. 301, which proposes a task force to look at developing competencies to grow and retain this workforce)

**ACT 48** - AFSCME seeks to commence collective bargaining on behalf of the independent direct support provider workforce. DAIL staff will be gathering data for the State’s negotiator to demonstrate the wages provided to this workforce in recent years. Bargaining is expected to begin before year’s end and continue into the spring. DAIL staff will provide subject matter expertise throughout the negotiations.

Also included in the Act was the creation of the “Self-Determination Alliance” comprised of program participants and family members tasked with advising the state on issues related to

stabilizing the independent direct provider work force and improving the quality of services provided to people with disabilities and elders who manage their services.

**Mental Health Oversight Committee discusses mental health needs of seniors** - Following Commissioner Wehry's October 31st testimony before the Mental Health Oversight Committee on both appropriate and inappropriate use of antipsychotics in elderly, Senator Sally Fox alerted Commissioner Wehry to the testimony the Committee had received that highlighted the difficulties in finding residential placements for individuals in hospital emergency rooms and units who present challenging mental health behaviors. Specifically, Sen. Fox was interested to know whether DAIL was aware of these types of cases and what steps, if any, are being taken to address these issues.

Dr. Wehry submitted a written response, in which she advised the Committee that DAIL is keenly aware of these issues, having fielded numerous calls about special rates and out-of-state placements for this population. The Commissioner informed the Committee that DAIL has launched a web-based training for the staffs of Adult Day programs, is concluding a 9-month process looking at rates for dementia care, and has been collaborating with VDH, DMH and DVHA on its approach to mental health and aging issues.

**Therapeutic Community Residence (TCR) regulations** - TCR Regs not been amended since 1977 (when first promulgated). Legislature directed DAIL to develop rules to license 7-bed facility in Middlesex as a TCR, which provide resident rights at least equal to those afforded patients at the former State Hospital. Despite being a secure facility, seclusion and restraint will not be utilized. In the unlikely event that they are, however, the facility shall comply with the Emergency Involuntary Procedure rules.

**State Fiscal Year 2015 BUDGET BUILD** - Budget to be presented on 11/22. Commissioners have been given level funding instructions

Meeting adjourned at 2:35 p.m.